IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Rajendra Singh.
vs.
Nishan Singh Pisar.

S.B.CIVIL REVISION PETITION NO.347/2006 UNDER SECTION 115 CPC AGAINST THE ORDER DATED 9.5.2006 PASSED BY SHRI YOGENDRA KUMAR PUROHIT, ADDITIONAL DISTRICT JUDGE (FAST TRACK), HANUMANGARH IN CIVIL SUIT NO.57/2005.

DATE OF JUDGMENT ::: 16.3.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.Rajeev Purohit, for the petitioner.

Mr.Ramandeep Singh, for the respondent.

- - - - -

BY THE COURT:

REPORTABLE

Heard learned counsel for the parties.

The petitioner/defendant is aggrieved against the

order dated 9.5.2006 by which the trial court decided issue no.5A about limitation against the petitioner and held that the respondent/plaintiff's suit is within the period of limitation.

Brief facts of the case are that the plaintiff/ respondent filed a suit claiming compensation of Rs.10 lakhs against the defendant/petitioner after paying court fees of Rs.50,065/- which is provided for ordinary civil suit for compensation. The plaintiff/ non-petitioner in the suit alleged that on 24.2.2000 at about 8:30 PM, the defendant/petitioner with an intention to kill the plaintiff fired 3 shots upon the plaintiff causing injury to the plaintiff for which FIR was lodged on 24.2.2000 under Section 307 IPC and Section 27 of the Arms Act. After investigation, challan was filed against the petitioner. The petitioner was convicted by Additional Sessions Court (Fast Track), Hanumangarh vide judgment dated 26.11.2002 and held him guilty under Section 307 IPC and sentenced him for 10 years imprisonment and imposed a fine of Rs.6,000/- and also awarded sentence of 3 years under Section 27 of the Arms Act. Because of the injuries, the plaintiff had to take treatment from Christian Medical College, Ludhiana, Punjab. The details of grave and serious injuries have been given in the plaint and further, it has been mentioned how

the plaintiff remained under treatment and suffered several disablements.

The defendant submitted written statement and denied the allegations.

Issues were framed by the trial court on 21.2.2004 and thereafter an additional issue no.5A was framed on 18.4.2006 on the plea taken by the defendant that the suit is liable to be dismissed as barred by time.

It appears from the written statement that the objection of bar of limitation against the suit was raised by the petitioner only by saying that the suit is barred by time. The petitioner submitted an application before the trial court and requested that since the objection about limitation is pure question of law, therefore, the issue of limitation may be decided as a preliminary issued.

Before the trial court, it was contended by the petitioner/defendant that the plaintiff's suit is under the provisions of Fatal Accidents Act, 1855 (for short 'the Act of 1855') and for such suit under the Act of 1855, the period of limitation for filing the suit is only one year from the date of cause of action. In the present suit, according to the plaintiff himself, the cause of action accrued on 24.2.2000 and the suit was filed on 24.2.2003. The trial court decided the issue in favour of the plaintiff after holding that any suit

by any injured person is a suit on the basis of general civil law and not and cannot be under the provisions of Act of 1855. For suit under general law for compensation because of personal injury, no specific period of limitation has been prescribed, therefore, as per Article 113, the period of limitation is three years and since the suit has been filed within three years period, therefore, the suit is within the period of limitation.

Learned counsel for the petitioner vehemently submitted that this Court in the case of Rajasthan State Electricity Board vs. Dharampal Singh reported in 2000 DNJ (Raj.) 42 held that the suit claiming compensation by injured person is also maintainable under the provisions of Act of 1855. In view of the above, the period of limitation applicable to the present suit is one year and not as provided under Article 113 of the Limitation Act.

Learned counsel for the respondent submitted that the plaintiff filed suit for compensation under general law and not under the Act of 1855. It is also submitted that it is nowhere mentioned in the plaint that the plaintiff is claiming compensation under the Act of 1855. Not only this, but that was not the plea taken by the defendant in his written statement or in his

application when the objection about limitation was raised by the defendant. Learned counsel for the respondent also submitted that the suit by injured person for compensation is not maintainable under the Act of 1855.

I considered the submissions of learned counsel for the parties and perused the reasons given by the court below in the impugned order as well as perused the record.

So far as plaint is concerned, it is nowhere mentioned that the plaintiff is filing suit under the Act of 1855 nor any inference can be drawn from the plaint that the plaintiff intended to claim compensation under the Act of 1855. Be it as it may be, this Court considered the judgment of this Court delivered in the case of Dharampal Singh (supra) in judgment delivered in the case of Raj Kumar vs. District Judge, Sriganganagar & Ors. reported in 2005 (1) DNJ (Raj.) 373 (by me) wherein it has been held that the injured person's suit for compensation on the basis of any injury inflicted upon him by the defendant is not maintainable under the Act of 1855. Therefore, so far as that issue is concerned, the contention of petitioner is devoid of any force and it is held that the suit of the plaintiff is not under the provisions

of the Act of 1855.

In the Indian Limitation Act, 1963, for suits relating to tort, the period of limitation has been provided in Part VII of Schedule-I and relevant Articles are from 72 to 91. In those Articles, the suit of present nature has not been included which is apparent from the bare reading of the Articles. Article 72 provides for limitation for suit claiming compensation for doing or omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act Extends. Article 73 provides for limitation for suit claiming compensation for false imprisonment. Article 74 provides for limitation for suit claiming compensation for malicious prosecution, Article 75 for libel and Article 76 for slander.

Learned counsel for the petitioner submitted that the plaintiff's suit may be covered under Article 79 which is a suit claiming compensation for an illegal, irregular or excessive distress. A bare reading of Article 79 also shows that it provides limitation for suits claiming compensation on account of distress and distress doesn't mean physical injury to person.

It will be worthwhile to mention here that earlier

under the Indian Limitation Act, 1908, there was Article 22 which was wide enough to cover very many types of suit for compensation. Article 22 reads as under :-

“22.	For compensation for any other injury to the person.	One year	When the injury is committed.”

In the said Article 22, only word used was “injury” and for all suits for compensation for any injury, the period of limitation was provided as one year. The provision like Article 22 has not been incorporated in the Act of 1963, therefore, it appears that it was done consciously so as to include the suits for compensation on the ground of injuries to the persons under Article 113 only.

In view of the above, it is held that the suit for compensation on the ground of causing injury by other, no period of limitation has been provided under the Limitation Act, 1963 and, therefore, are covered by Article 113 and, therefore, the period of limitation for such suit is three years from the date of accrual of cause of action.

In view of the above discussion, this revision

petition having no force is hereby dismissed.

The record be sent forthwith to the court below.

(PRAKASH TATIA), J.

S.Phophaliya